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CITY OF GARY

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## 2023 CITY OF GARY BOARD OF ZONING APPEALS POLICIES, PROCEDURES, AND INSTRUCTIONS

Meetings are held on the 2nd Thursday of the month at 3:00 pm CT. Meetings are held in person at City Hall in accordance with state requirements.

January 12, (Cancelled)	April 13,	July 06,	October 12,
February 09,	May 11,	August 10,	November 09,
March 09,	June 08,	September 14,	December 14,

### Application Types:

Type 1 - Use Variance

Type 2 - Special Use Variance

Type 3 - Developmental Standards Variance

<b>AFTER THE PRE-APPLICATION PROCESS * see BZA PROCESS</b>				
<b>WHAT</b>	<b>WHO</b>	<b>WHEN</b>	<b>WHY</b>	<b>NOTES</b>
Submit application and pay fee	Applicant	at least 21 days prior to the BZA meeting	BZA RULE GMC Sec. 123-32; Chapter 20	Application to Zoning; Fee to Finance
Provide applicant with public and neighbor notification info	Zoning Administrator	at least 17 days prior to the BZA meeting	BZA RULE GMC Sec. 123- 109	Info on: Legal ad, Certified mailing, sign
Notify interested parties by certified mail	Applicant	at least 10 days prior to the BZA meeting	IC 5-3-1-2	Neighbors within 100 feet of property boundary
Submit legal ad	Zoning Administrator	at least 10 days prior to the BZA meeting	IC 5-3-1-2	NWI Times meets state criteria
Applicant posts sign on property	Applicant	at least 10 days prior to the BZA meeting	BZA RULE	To increase public notification
Finalize meeting logistics and send packet to BZA members	Zoning Administrator	at least 5 days prior to the BZA meeting	BZA RULE	Confirm attendance of petitioners and BZA members



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**AFTER THE PRE-APPLICATION PROCESS \* see BZA PROCESS**

WHAT	WHO	WHEN	WHY	NOTES
BZA meeting	All	Monthly, every 2nd Thursday at 3:00pm	BZA RULE GMC Sec. 123-30	2nd Monday when date is a holiday
Confirm the criteria used to determine recommendation	BZA members	Next day after BZA meeting	BZA RULE GMC Sec. 123-30	Send criteria to the Zoning Administrator
Send recommendations to Legal Department	Zoning Administrator	Following Tuesday after BZA meeting	BZA RULE GMC Sec. 123-30	Legal needs to send to Clerk by noon Wed. (unfavorable petitions also)
Send legislation with C.P.O. # that includes <b>VARAIANCE, PROPERTY LOCATION, PETITIONER AND BZA PETITON NUMBER</b> to the Zoning Administrator	Legal Department or Zoning Legal Assistant	Monday following submission to the Clerk's office	LEGAL RULE	Track legislation to determine Council acceptance of BZA favorable/unfavorable recommendations.
Send dates that the petition will be heard at the Council meeting (for all readings)	Legal Department or Zoning Legal Assistant	one week prior to the Council meeting	LEGAL RULE	Time is needed to notify petitioners to appear at meeting (where required)
Send final legislation (signed) to the Zoning Department to include in files	Legal Department or Zoning Legal Assistant		LEGAL RULE	Document zoning changes on City zoning map  <b>(CRITICAL MUST BE COMPLETED)</b>
Confirm that legislation has been recorded at the Lake County Recorder's Office	Legal Department or Zoning Legal Assistant		BZA RULE GMC Sec 123-30	Required for Mapping  <b>(CRITICAL MUST BE COMPLETED)</b>
<b>The Zoning Administrator Will Receive a Copy of the Signed Ordinance and Include It in Both the Electronic and Hard Copy Files and Update the Zoning Map to Reflect the Variance, If Applicable.</b>				



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As long as Lake County has a population in the range identified by IC-36-7-4-918.G(a), special exceptions, special uses, and use variances are required to be forwarded to the Common Council for approval or disapproval. This does not apply to development standards variances.

**IC-36-7-4-918.6**

- a) This section applies to the following:
- (1) A municipality in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).
  - (2) A county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).
- b) **ADVISORY--AREA.** Notwithstanding sections 918.2, 918.4, and 918.5 of this chapter, a zoning or subdivision control ordinance shall require that the board of zoning appeals submit any of the following petitions to the legislative body for approval or disapproval:
- (1) Special exceptions.
  - (2) Special uses.
  - (3) Use variances.
- c) **ADVISORY--AREA.** The board of zoning appeals shall file a petition under this section with the clerk of the legislative body with:
- (1) a favorable recommendation;
  - (2) an unfavorable recommendation; or
  - (3) no recommendation.
- d) **ADVISORY--AREA.** The legislative body shall give notice under IC 5-14- 1.5-5 of its intention to consider the petition at its first regular meeting after the board of zoning appeals files its recommendation.
- ( e) **ADVISORY--AREA.** A petition is granted or denied when the legislative body votes on the petition as follows:
- (1) In a county described in subsection (a)(1), the legislative body shall vote on the petition within ninety (90) days after the board of zoning appeals makes its recommendation. If the legislative body does not vote to deny the petition within ninety (90) days, the petition is considered approved. In a county described in subsection (a)(2), the legislative body shall vote on the petition within sixty (60) days after the board of zoning appeals makes its recommendations. If the legislative body does not vote to deny the petition within sixty (60) days, the petition is approved.
- f) **ADVISORY--AREA.** If the legislative body approves a petition, it must make the determination in writing as required under section 918.2, 918.4, or 918.5 of this chapter or as required by the zoning ordinance.



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**IC 5-3-1-2 Public hearings or meetings, elections, and other events; requirements for publication of notice; posting instead of publication; failure or refusal to publish Sec. 2.**

- (a) This section applies only when notice of an event is required to be given by publication in accordance with this chapter.
- (b) If the event is a public hearing or meeting concerning any matter not specifically mentioned in subsection (c), (d), (e), (f), (g), (h), or (i), notice shall be published one (1) time, at least ten (10) days before the date of the hearing or meeting.
- (c) If the event is an election, notice shall be published one (1) time, at least ten (10) days before the date of the election.
- (d) If the event is a sale of bonds, notes, or warrants, notice shall be published two (2) times, at least one (1) week apart, with:
  - (1) the first publication made at least fifteen (15) days before the date of the sale; and
  - (2) the second publication made at least three (3) days before the date of the sale.
- (e) If the event is the receiving of bids, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.
- (f) If the event is the establishment of a cumulative or sinking fund, notice of the proposal and of the public hearing that is required to be held by the political subdivision shall be published two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before the date of the hearing.
- (g) If the event is the submission of a proposal adopted by a political subdivision for a cumulative or sinking fund for the approval of the department of local government finance, the notice of the submission shall be published one (1) time. The political subdivision shall publish the notice when directed to do so by the.....
- (h) If the event is the required publication of an ordinance, notice of the passage of the ordinance shall be published one (1) time within thirty (30) days after the passage of the ordinance.
- (i) If the event is one about which notice is required to be published after the event, notice shall be published one (1) time within thirty (30) days after the date of the event.
- (j) If any officer charged with the duty of publishing any notice required by law is unable to procure publication of notice:
  - (1) at the price fixed by law;
  - (2) because all newspapers or locality newspapers that are qualified to publish the notice refuse to publish the notice; or
  - (3) because the newspapers or locality newspapers referred to in subdivision refuse to post the notice on the newspapers' or locality newspapers' Internet web sites (if required under section 1.5 of this chapter);



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it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of publication of the notice in newspapers or locality newspapers and on an Internet web site (if required under section 1.5 of this chapter).

- (k) This subsection applies if an officer described in subsection (j) or the officer's designee submits a notice to a newspaper or locality newspaper in a timely manner and the newspaper or locality newspaper does not refuse to publish the notice but subsequently fails to publish the notice. If, within the same period required for publishing notice under this section, the officer or officer's designee posts:

- (1) printed notices in three (3) prominent places in the political subdivision; or
- (2) notice on the political subdivision's Internet web site in a location where the notice is easily accessible and identifiable;

the notice is sufficient, and publication of the notice in newspapers or locality newspapers and on the newspapers' Internet web sites (if required under section 1.5 of this chapter) is not required.

Special exception, special uses, use variances are forwarded from the BZA to the Common Council with a favorable, unfavorable, or no recommendation to the council. Development standards variances are approved or denied by the BZA. Unfavorable recommendations get sent in a Memo title "Notice of Unfavorable Recommendation" to the Council from the Zoning Administrator.

**City of Gary municipal code Sec. 123-30. - Board of zoning appeals (BZA).**

- (a) A board of zoning appeals is created, as set forth in IC 36-7-4-901 and 36-7-4-902. None of the members may hold other elective or appointive office, except as set forth in IC 36-7-4-902. A member must be a resident of the jurisdictional area of the board.
- (b) The members of the board shall be appointed for the following terms: one for a term of one year; one for a term of two years; one for a term of three years; and two for a term of four years. The terms shall expire on the first day of January of the first, second, third, or fourth year, respectively, following the appointment. Thereafter, as the terms expire, each new appointment shall be for a term of four years. If a vacancy occurs, by resignation or otherwise, among the members of the board, the mayor shall appoint a member for the unexpired term.



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At the first meeting of each year, the board shall elect a chairperson and

The common council shall provide suitable offices for the holding of hearings and the preservation of records, documents, and accounts. The common council may appropriate funds to carry out the duties of the board and the board shall have the authority to expend, under regular city or county procedure, all sums appropriated to it for the purposes and activities authorized herein.

The members of the board shall serve without salary.

The board shall adopt all rules concerning the filing of appeals and applications for variances and exceptions, giving of notice, and conduct of hearings, as shall be necessary to carry out its duties as defined herein. The board shall keep minutes of its proceedings, keep records of its examinations and other official acts, and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the board and shall be a public record.

## **TYPE 1- USE VARIANCE**

### **Use Variance Application**

<https://gary.gov/zoning/wp-content/uploads/sites/32/2021/01/USE-VARIANCE-APPLICATION.pdf>

### **GMC Sec. 123-284 - Variances.**

- (a) The board of zoning appeals may consider issuing a variance to the terms and provisions of this division provided the applicant demonstrates that:
  - (1) There exists a good and sufficient cause for the requested variance;
  - (2) The strict application of the terms of this division will constitute an exceptional hardship to the applicant; and
  - (3) The granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- b) The board of zoning appeals may issue a variance to the terms and provisions of this division subject to the following standards and conditions:
  - (1) No variance or exception for a residential use within a floodway subject to [section 123-304](#) (1) or (2) may be granted;
  - (2) Any variance or exception granted in a floodway subject to [section 123-304](#) (1) or (2) will require a permit from the department of natural resources;
  - (3) Variances or exceptions to the building protection standards of [section 123-305](#) may be granted only when a new structure is to be located on a lot of one-half acre or less in size,



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contiguous to and surrounded by lots with existing structures constructed below the flood protection grade;

(4) Variances or exceptions may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;

(5) All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and

(6) The board of zoning appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of increased flood insurance premiums.

(Code 1989, § 163.093; Ord. No. 6705, § 10, 3-16-1994; Ord. No. 8256, § 1(163.093), 2-17-2009)

## **TYPE 2 - SPECIAL USE PERMIT**

### **Special Use Permit Application**

<https://gary.gov/zoning/wp-content/uploads/sites/32/2023/01/SPECIAL-USE-APPLICATION-2023.pdf>

### **GMC Sec. 123-59. - Special uses.**

(a) The formulation and enactment of this chapter is based on the division of the entire city into zoning districts, in each of which are authorized specified land uses that are permitted as mutually compatible, special exceptions, or transitional uses. It is recognized that special exceptions are land uses which it may be necessary or desirable to allow in a given zoning district but which on account of their potential impact upon neighboring land uses or public facilities need to be carefully regulated with respect to location or operation for the protection of the community. These land uses and fall into two categories:

(1) Uses either municipally operated or operated by publicly regulated utilities, or uses traditionally affected by public interest.

(2) Uses entirely private in character which on account of their peculiar locational need or the nature of the service they offer to the public may have to be established in a zoning district or districts in which they cannot reasonably be allowed as a permitted use under the zoning regulations. It is also recognized that transitional land uses may be appropriate for those areas along a zoning district border to allow for a mix of land uses from each zoning district that share a common border to provide for an overlap of zoning district land use activities and implement sustainable growth principles and initiatives to overcome strict traditional zoning boundary delineations. Transitional uses may be permitted when located on a lot that is tangential to a zoning district boundary delineation or separated by a right-of-way, alley or public, private or railroad easement.



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- (b) An application for a special use shall be filed with the planning department upon the form and accompanied by the information established from time to time by the planning department. The city clerk shall forward to the planning department without delay a copy of each ordinance proposed for authorizing a special use.
- (c) Special uses shall be authorized by the board of zoning appeals. No special use shall be granted by the board of zoning appeals unless the special use meets the following:
- (1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, or general welfare.
  - (2) The special use will not be injurious to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted.
  - (3) The establishment of the special use will not impede or substantially alter the normal and orderly development and improvement of surrounding property for uses permitted in the district.
  - (4) Adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.
  - (5) Adequate measures have been or will be taken to provide for access management, ingress and egress so designed as to minimize traffic congestion on the public roads.
  - (6) The special use will be located in a district where such a use is authorized and all other requirements set forth in this chapter which are applicable to such special use will be met.
  - (7) The petitioner documents and presents to the commission that proposed special use provides for the implementation of sustainable growth principles and initiatives as approved by the commission.
- (d) The board of zoning appeals provides conditions or restrictions upon the construction, locations, operation, and time limit that construction must begin or the special use is null and void, including but not limited to provisions for off-street parking and loading, as necessary to secure the general objectives of this chapter and to reduce injury to the value of property in the neighborhood. (Code 1960, § 6-1312; Code 1989, § 163.041; Ord. No. 3376; Ord. No. 4255; Ord. No. 4266; Ord. No. 5965, 2-7-1984; Ord. No. 8256, § 1(163.041), 2-17-2009)

**Licensed Home-based Daycare Facilities require a Gary Business License and, if in a district zoned residential, must obtain a Special Use Permit.**

Indiana Code 12-17.2 establishes the authority for the Indiana Family and Social Services Administration, Office of Early Childhood and Out-of-School Learning, to regulate child care in the state. It also authorizes the office to adopt rules to implement the federal Child Care and Development Fund voucher program administered by the Office of Early Childhood and Out-of-School Learning for the state. Following are the laws (\*updated July 2022):

- [IC 12-17.2-2 Chapter 2. General Powers and Duties of the Division](#) \*
- [IC 12-17.2-2.5 Chapter 2.5. Child Care Advisory Committees](#) \*





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- IC 12-17.2-3.5 Chapter 3.5. Eligibility of Child Care Provider to Receive Reimbursement Through Voucher Program \*
- IC 12-17.2-4 Chapter 4. Regulation of Child Care Centers \*
- IC 12-17.2-5 Chapter 5. Regulation of Child Care Homes \*
- IC 12-17.2-6 Chapter 6. Regulation of Child Care Ministries \*
- IC 12-17-12 Chapter 12 School Age Child Care Project Fund (establishes the authority for the Office of Early Childhood and Out-of-School Learning to make grants to approved applicants for the establishment and maintenance of a school-age child care program)

The legal definition of a child care center, child care home, child care ministry, Class I child care home, or Class II child care home can be found in IC 12-7-2, and the definition of a school age child care program can be found in IC 12-17-12-5.

### **TYPE 3 – DEVELOPMENTAL STANDARDS VARIANCE**

<https://gary.gov/zoning/wp-content/uploads/sites/32/2023/02/DEVELOPMENT-STANDARDS-VARIANCE.pdf>

**GMC Sec. 123-284 - Variances. (see above)**